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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,798

01/29/2004

Neil G. Murray JR.

TRW(TE)6888

7228

26294 7590 09/23/2009  
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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT

PAPER NUMBER

2855

MAIL DATE

DELIVERY MODE

09/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* NEIL MURRAY and DOUGLAS BENEFIEL

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Application No. 10/767,798  
Technology Center 2800

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Mailed: September 23, 2009

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Before TOI JOHNSON *Review Paralegal*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 21, 2009. A review of the application revealed that it is not ready for docketing as an appeal.

Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER,  
INCONSISTENCIES WITH THE BRIEF AND/OR  
LAST REJECTION OF RECORD

A review of the file finds inconsistencies between the Final Rejection mailed April 11, 2008, corresponding "Status of Claims" sections in the Appeal Brief filed December 10, 2008, and the Examiner's Answer mailed May 5, 2009 as set forth below.

Final Rejection

A review of the Final Rejection mailed on April 11, 2008, finds the following status of the claims: claims cancelled: 9-11 and 22-23, claims rejected: 1-8, 12-21 and 24-36 (Office Action Summary). A further review of the file finds that the Amendment filed February 21, 2008, reflects that claims 1-8, 12-21 and 24-36 are pending.

However, claims 35 and 36 are not included for review in the Final Rejection.

Appeal Brief

A review of the Appeal Brief filed on December 10, 2008, finds that the claims on appeal are 1-8, 12-21 and 24-36, as compared to the Final Rejection's Office Action Summary and the Amendment filed February 21, 2008.

Examiner's Answer

A review of the Examiner's Answer mailed on May 5, 2009, finds that the status for claims 35 and 36 is unclear as compared to the Office Action Summary and the Appeal Brief. Specifically, claims 35 and 36 have not been discussed in the Examiner's Answer.

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed on May 5, 2009;
- 2) issue a Supplemental Examiner's Answer to clarify the rejection of claims 35 and 36 and to correct other sections of the Answer as may be required;
- 3) include the necessary approval from the TC Director or designee in accordance with MPEP 1207.05, part (B) as may be required for any new grounds of rejection; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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